

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ANTOINE SAMULE LEE,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:06CV140
(Judge Keeley)

JORGE S. VAZQUEZ,
AL HAYNES, J. HAMMOND
and VICTOR ORSOLITS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On September 18, 2006, pro se plaintiff Antoine Samule Lee ("Lee") filed a civil rights complaint, pursuant to Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388, 395 (1971), alleging that the defendants violated his civil rights by failing to provide proper medical care, specifically, by failing to provide his female hormone medications. The Court referred the Complaint to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.02.

On November 9, 2006, the Magistrate Judge issued an Order granting Lee's application to proceed without prepayment of fees. That Order specifically warned Lee that "Plaintiff shall notify the Clerk of Court immediately upon transfer or release, and shall provide a new address if known. FAILURE TO NOTIFY THE COURT OF SUCH CHANGE OF ADDRESS MAY RESULT IN THE DISMISSAL OF THIS CASE WITHOUT PREJUDICE."

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On May 4, 2007, Lee notified the Court that he had been transferred to a different institution, and provided the Court with his new address. Then, on July 27, 2007, Lee notified the Court that he had been released and he provided a residential address in Cincinnati, Ohio.

On September 13, 2007, the defendants filed a motion to dismiss. A Roseboro notice was issued to Lee on October 31, 2007, directing Lee to respond to that motion. That notice was returned by the United States Postal Service as undeliverable on November 26, 2007.

On July 3, 2008, Magistrate Judge Kaull then entered a Report and Recommendation recommending that Lee's Complaint be dismissed with prejudice. Specifically, Magistrate Judge Kaull found that Lee had failed to exhaust his remedies in the Bureau of Prisons ("BOP"), and thus he had filed his civil rights claim prematurely. Because Lee has since been released from the BOP, the Magistrate Judge concluded that it is now too late for him to successfully exhaust those remedies, and thus he recommended dismissing the Complaint with prejudice. The Report and Recommendation also informed Lee that failure to object to the report and recommendation would result in the waiver of his appellate rights

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on this issue. On July 16, 2008, the United States Postal Service returned this document marked "undeliverable."

Lee was advised that failure to keep the Court apprised of a current address may result in the dismissal of this case. Lee clearly understood this obligation, as he provided an updated address on two occasions. Moreover, as set forth in the Report and Recommendation, Lee filed his suit prematurely due to his failure to exhaust his administrative remedies, and his subsequent release from BOP custody eliminates his ability to cure this deficiency. Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 42), **GRANTS** the defendants motion to dismiss (dkt. no. 37), and **ORDERS** this case **DISMISSED WITH PREJUDICE**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and the pro se petitioner, certified mail, return receipt requested.

Dated: July 22, 2008.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE